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NOTES OF CASES.

Lease—Construction—Minerals—Clause Against Working Adjoining Minerals—Absolute Prohibition.—In *Forrest v. Merry* (1909) A. C. 417 a mining lease was in question, whereby the defendants were empowered to work certain coal seams under certain lands, and by a contemporaneous agreement it was agreed that the lessees would work the coal under certain adjoining lands only to such extent as would enable them to pay £550, being the amount of fixed rents payable to the owners of such adjoining lands, and that if they exceeded that amount they should pay 1d. per cwt. for the excess. The question was whether this amounted to an absolute prohibition from mining under the adjoining lands in excess of the £550, or whether it meant that the lessees were at liberty to mine as much as they pleased, paying for the excess 1d. per cwt. The case caused some diversity of opinion. The Lord Ordinary held that the clause amounted to an absolute prohibition, and gave judgment in favor of the pursuers, but the Court of Session “recalled the Lord Ordinary’s interlocutor and assoilzied the defenders,” to use the technical language of Scots law, the Lord President dissenting. The House of Lords (Lord Loreburn, L. C., and Lords James, Atkinson, Gorrell and Shaw) agreed with the Lord Ordinary and the Lord President, and reversed the decision of the Court of Session, being of the opinion that the first part of the clause limiting the right of working to £550 would be nullified unless it were taken to imply a prohibition.—*Canada Law Journal*.

Creation of Tenancy from Month to Month by Holding Over.—It was held by the supreme court of appeals of West Virginia in *Kaufman v. Mastin*, 66 S. E. 92, that a tenant’s holding over and paying monthly rent beyond the term of a lease for a year, relating to urban premises, in which lease rent is reserved by the month and is payable as monthly periods, does not, alone, imply a renewal by the year. A renewal of the tenancy by the month is thereby implied.

The court said obiter, however, that: “Of course, if the lease is originally for a year, or term of years, and the rent is reserved as a yearly rent, even though payable in installments, a holding over and acquiescence therein of the landlord implies a renewal by the year.” *Kaufman v. Mastin*, 66 S. E. 92.

The lease was in these words: “This lease is to continue for one year from the first day of May, 1904. The rent to be paid for said room above described is fifty dollars per month, payable at the last of each month respectively.” *Kaufman v. Mastin*, 66 S. E. 92.

This is a decision of considerable importance and will come as a great surprise to many of the profession. But in our opinion it is sound, though it is strange that such a common form of lease as this

should never have come up for construction as to this point before. The question for decision was whether 30 days notice to quit was sufficient.

Probate—Conditional Will—Expressed Reason for Making Will—Construction of Document—Parol Evidence.—The testator, while employed in India, executed a testamentary paper headed "My Will" which, after giving directions as to property, "if anything should happen to me while in India," concluded with a universal bequest to his wife of all property belonging to him at the time of his death. No executor was appointed by the paper. The testator left India two years after executing the paper, and died in England thirty-six years after executing the paper.

On two occasions, the latter of them being shortly previous to his death, the testator made declarations of adherence.

H. Durley Grazebrook, for the widow, who claimed probate with the will annexed, relied on *In the goods of Mayd* (1880), 50 Law J. Rep. P. 7; L. R. 6 P. Div. 17, and *In the goods of Stuart* (1888), 21 L. R. Ir. 105.

J. H. Murphy, for next-of-kin, contended that the will was conditional on death occurring in India, and therefore inoperative in the event which had happened. He cited *Parsons v. Lanoe* (1748), 1 Ves. sen. 189; *Roberts v. Roberts* (1862), 31 Law J. Rep. P. 46; 2 Sw. & Tr. 337, and other cases, and as to admissibility of the declarations *In the goods of Bryan* (1907), 76 Law J. Rep. P. 30; L. R. (1907) P. 125. Cur. adv. vult.

Jan. 31.—The President (Sir J. Bigham), after stating the facts, referred to a case which neither party had cited—*In the goods of Spratt* (1896), 66 Law J. Rep. P. 25; L. R. 97 P. 28—where all the authorities were carefully reviewed by Lord St. Helier. The rule might be exemplified thus: If a man wrote 'Should I die to-morrow my will is ——' his death must so occur to make it operative, whereas if he wrote 'Lest I die to-morrow' it would be operative whether he died on the morrow or not. This will, he thought, was divisible into two portions, and he regarded the concluding bequest as independent of the condition. If there were any doubt, he thought that on the authority of *In re goods of Bryan* (1907), 76 Law J. Rep. P. 30; L. R. (1907) P. 125, he was entitled to admit the declarations of adherence, which satisfied him that the testator intended a disposition whether he died in India or not. There would be a grant of administration with the will annexed.

Costs out of the estate.

Liability of Municipal Corporation for Injury to Prisoner.—Plaintiff, in *Morgan v. City of Shelbyville*, 121 Southwestern Reporter, 617, after imbibing too freely of Kentucky Mountain Dew, or some